IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.07.2006

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.1791 of 2006
Appeal No.688 /2006

Commissioner of Income-Tax,
Madurai. ... Appellant /Respondent

Vs.

M/s.Valli Cotton Traders Pvt. Ltd.,
(Unit of Loyal Textile Mills Ltd.)
21/4, Mill Street,
Kovilpatti. ... Respondent /Appellant

The above T.C.(Appeal) is preferred under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 29.8.2005 made in C.O.30(Mds)/2001 in ITA No.27(Mds)/2001 for the assessment year 1993-94.(ITA No.569/99-2000, dt. 4.9.2000 on the file of Commissioner of Income Tax (Appeals) XIII Chennai against PA No.47-042- CZ-9946 dt. 30.3.1999 on the file of Joint Commissioner of Income Tax, Special Range II, Madurai.

For Appellant : Mrs.Pushya Sitaraman
Standing Counsel for IT

J U D G M E N T

(Judgment of the Court was made by P.D.DINAKARAN, J.)

The Revenue is the appellant.

2. The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal made in C.O.30(Mds)/2001 in ITA No.27(Mds)/2001 dated 29.8.2005 with reference to the assessment year 1993-94.

3.1. The brief facts of the case are stated as follows:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The assessee filed its return on 24.12.93 for the assessment year 1993-94 claiming a loss of Rs.12,31,784/- and the assessment under section 143(3) of the Income-tax Act (for brevity 'the Act') was completed on 29.3.96. In this assessment, the interest paid on borrowed funds which was diverted to sister-concerns was not disallowed, as the same was disallowed during the previous year. In view of this, income had escaped assessment within the meaning of Section 147 of the Act. Hence, notice under section 148 of the Act was issued and assessment was completed under section 147 of the Act, which resulted in profit. Since the assessee had not filed Form 10CCAC, which ought to have been filed along with the return, to claim deduction under Section 80HHC, as he claimed only loss in his original return, the assessee claimed deduction under section 80HHC based on the audit report by filing Form 10CCAC. But, the assessing officer, by order dated 30.3.99, did not allow the assessee to file a report for its claim of deduction under section 80HHC.

3.2. Aggrieved by the said order of the assessing officer dated 30.3.99, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals). Before the Commissioner, the assessee sought permission to claim deduction under section 80HHC based on the audit report by filing Form 10CCAC, which ought to have been filed along with the return. As the assessee did not file the audit report along with the return, the Commissioner of Income-tax (Appeals), by order dated 4.9.2000, rejected the claim of the assessee for deduction under section 80HHC on the ground that Form 10CCAC was not filed along with the return or during the assessment proceedings and confirmed the view taken by the assessing officer. However, with regard to addition of notional interest on borrowed funds diverted to sister concerns, the Commissioner of Income-tax (Appeals) accepted the case of the assessee and deleted the addition by following its own decision in the assessee's own case during the previous year.

3.3. Against the order of the Commissioner of Income-tax (Appeals) dated 4.9.2000, disallowing the claim of deduction under section 80HHC and refusing to permit the assessee to produce the audit report in Form 10CCAC, the assessee filed an appeal before the Income-tax Appellate Tribunal. Similarly, the Revenue also preferred an appeal before the Tribunal with regard to the deletion of notional interest on the borrowed funds diverted to sister concerns. The Tribunal, by a common order dated 29.8.2005, allowed the appeal filed by the Revenue with regard to the notional interest and remanded the matter back to the assessing officer for fresh consideration and also allowed the appeal filed by the assessee with regard to the claim of deduction under section 80HHC by filing the audit report in Form 10CCAC by remitting the matter to the file of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the Assessing Officer to re-examine the issue after considering the Form No.10CCAC filed by the assessee.

3.4. Against the order of the Tribunal allowing the appeal filed by the assessee by remitting the matter to the assessing officer to re-examine the deduction under Section 80HHC after taking account the Form 10CCAC, the Revenue has preferred this appeal by raising the following substantial question of law:-

> " Whether in the facts and circumstances of the case, the Tribunal was right in remanding the matter back to re-examine and decide the issue of allowing deduction under sec. 80HHC when the assessee failed to file Form 10CCAC along with the return as prescribed by the statute ?"

4. Mrs.Pushya Sitaraman, learned senior standing counsel appearing for the Revenue, fairly concedes that the Revenue has no grievance as to the remittance of the matter to the assessing officer with regard to the deletion of notional interest on borrowed funds diverted to sister concerns. However, strong objections have been taken by the learned senior standing counsel as to the remittance of the matter with regard to the claim of deduction by the assessee under section 80HHC to re-examine the same after taking into consideration the audit report in Form 10CCAC filed by the assessee.

5.1. In the order of the Tribunal, it is observed that the assessee did not file Form 10CCAC for grant of deduction under Section 80HHC along with its original return, as per which the assessee had shown only a loss. But the assessee stating that the assessing officer re-computed the income, which resulted in profit, requested the Commissioner of Income-tax (Appeals) for deduction under section 80HHC by filing the audit report in Form 10CCAC. Even though the Commissioner rejected the same, appreciating the explanation offered by the assessee, the Tribunal allowed the appeal filed by the assessee and also directed the assessing officer to re-examine the issue after considering the Form 10CCAC filed by the assessee for the purpose of claiming deduction under section 80HHC.

5.2. Even though the learned senior standing counsel submits that the failure on the part of the assessee to file the audit report in Form 10CCAC along with the original return bars the assessee to claim any deduction under section 80HHC, which, according to her, is only directory and not mandatory, as held by several decisions of this Court and other High Courts as well as the Apex Court, such benefit can be given before passing of the assessment order, but not thereafter, particularly, taking advantage over the setting aside of the assessment order on appeal or on further appeal. According to the learned senior standing counsel,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

once the assessment order came to be passed based on the original return, the assessee ceased to have the right to claim any deduction under section 80HHC by filing Form 10CCAC based on the audit report. She submits that the failure to file the audit report along with the return or before passing of the assessment order, therefore, is a bar for filing the audit report at a later point of time, even though the original assessment order was set aside on appeal and the matter was remanded back to the assessing officer.

6.1. But, we are unable to accept the said contention. In this connection, we are inclined to refer to sub-sections (5) and (9) of Section 139 of the Income-tax Act, which read as follows:-

> "(5) – If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier."
>
> (9) Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return.

6.2. On going through the above provisions under the Act, we find that section 139(5) of the Act enables the assessee, who, having furnished a return under section 139(1) or in pursuance of a notice issued under section 142(1), discovers any omission or any wrong statement therein, to furnish a revised return at any point of time before the expiry of one year from the end of the assessment year or before the completion of the assessment, whichever is earlier and section 139(9) of the Act provides that where the Assessing Officer considers the return of income furnished by the assessee as defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of such intimation.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6.3. It is a settled law that while construing provisions of statute, apparent inconsistency of those provisions with the provisions of another related statute should be harmonised and reconciled in the light of the object and purpose of the legislation in question, vide RAGHBIR v. STATE OF HARYANA [(1981) 4 SCC 210].

6.4. That apart, the Apex Court, in CALCUTTA GUJARATI EDUCATION SOCIETY v. CALCUTTA MUNICIPAL CORPN. [(2003) 10 SCC 533], held that the rule of reading down a provision of law is a rule of harmonious construction in a different name, which is resorted to smoothen the crudities or ironing out the creases found in a statute to make it workable. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute and it is to be used keeping in view the scheme of the statute and to fulfil its purposes.

6.5. Therefore, a harmonious construction of sub-sections (5) and (9) of section 139 of the Act would go to show that the power conferred on the assessing officer under sub-section (9) has to be read with sub-section (5), in which event, the consequences would be that as per sub-section (5), the assessee themselves could voluntarily file a revised return, if they discover any omission or any wrong statement in the original return or alternatively, as per sub-section (9), if the assessing officer considers the return of income furnished by the assessee as defective, he may intimate the defect to the assessee and give an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf.

6.6. In the instant case, it is clear from the records that it is the assessing officer, who refused to accept the original return filed by the assessee, in which the assessee had shown a loss and after issuing notice under section 148 of the Act, completed the assessment under section 147 of the Act, which resulted in profit. Therefore, at that point of time, the assessing officer ought to have informed the assessee that the non-furnishing of the audit report in Form 10CCAC to claim deduction under section 80HC is a defect.

WEB COPY

7.1. Then, a question arises for our consideration whether non-filing of the audit report in Form 10CCAC is a defect within the meaning of section 139(9) of the Act. This question is already settled in the decision rendered in C.I.T. v. R.B.B.MOTILAL MALWASIE TRUST [(1992) 195 ITR 825], wherein the Calcutta High Court held as follows:-

" Sub-section (5) of section 139 of the Income-tax Act,

https://hcservices.ecourts.gov.in/hcservices/

1961, enables an assessee to file a revised return and sub-section (9) of section 139 empowers the Assessing Officer to intimate defects in the return to the assessee giving him an opportunity to rectify them. The Assessing Officer has power to ask the assessee to remove all defects in the return other than the defects making the return invalid. The defects specified in sub-section (9) of section 139 are illustrative and not exhaustive. The object of sub-sections (5) and (9) of section 139 is to get removed and rectified all defects and omissions in the return filed, whether they are discovered by the assessee or by the Assessing Officer. Both the provisions are enabling provisions inserted to facilitate reflection of correct income in the return and assessment thereof. These provisions can be simultaneously applied. If the object of sub-section (5) of section 139 is to rectify a wrong or omission in the return, then any act through which such rectification is carried can be treated as revising the return if, in substance and in effect, the purpose of the Act is achieved and is not defeated. Thus, documents placed on record with or without covering letters with intention to remove any omission or wrong in the return or record cannot be ignored simply because the revised return was not furnished unless it is shown that the purpose of the Act is not satisfied."

7.2. Again in MURALI EXPORT HOUSE v. COMMISSIONER OF INCOME-TAX [(1999) 238 ITR 257], the Calcutta High Court has held that the filing of the special audit certificate along with the return is not mandatory but only directory and that the assessing officer has power under sub-sections (5) and (9) of section 139 of the Income-tax Act to grant opportunity to rectify the omission and he is not justified in disallowing the claim of the assessee under section 80HHC on the ground that the special audit certificate was not filed along with the return.

7.3. That apart, this Court, in an unreported decision in T.C.(A).No.905 of 2005 dated 26.10.2005 (between the Commissioner of Income-tax vs. M/s.Pandian Hotels Ltd.) held that the filing of audit report along with the return is not a mandatory condition for the purpose of claiming deduction under section 80HHD of the Act.

8. Therefore, it is clear that the spirit behind sub-sections (5) and (9) of section 139 read with section 80HHC of the Act is that the assessee should be given a fair and reasonable opportunity to claim the benefit as available under the statute and any denial on technical ground is not justified. Merely because the assessee seeks to claim deduction under section 80HHC based on the audit

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

report in Form 10CCAC after setting aside of the original assessment order and at the stage of remittance of the matter, particularly, under the facts and circumstances of the case when, in the original return, the assessee had shown loss and subsequently, after the assessing officer passed an order under section 147 of the Act which resulted in profit, at which point of time the assessee claimed deduction under section 80HHC based on the audit report in Form 10CCAC, in view of the specific provisions available under the statute, the assessee should not be denied the opportunity to file audit report for the purpose of claiming benefit under section 80HHC.

9. In view of our above discussion, we confirm the order of the Tribunal made in regard to the remittance of the matter to the assessing officer for fresh consideration with regard to the claim of the assessee to avail the benefit of section 80HHC by filing the audit report in Form 10CCAC.

10. Accordingly, finding no question of law that arises for our consideration in this appeal, the same is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sra

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Bench "C", Chennai.
2.The Commissioner of Income Tax
(Appeals) -XIII, Chennai.
3.The Joint Commissioner of Income-tax,
Special Range-II, Madurai.
4.The Commissioner of Income Tax,
Madurai.

+1cc to Mrs.Pushya Sitaraman, Advocate Sr 31134

AKM (Co)
km/30.8.

T.C.(A) No.1791 of 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/